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7  
8 Attorneys for Defendants *Marwan Shipping*  
*& Trading, Five Seas Shipping Co., LLC,*  
*and Al-Buhaira National Insurance Co.*  
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FILED

DISTRICT COURT OF GUAM

JAN 26 2007 ✓

MARY L.M. MORAN  
CLERK OF COURT

10 UNITED STATES DISTRICT COURT  
11

12 DISTRICT OF GUAM

13 UNITED STATES OF AMERICA,

14 NO. CIV06-00011

15 Plaintiff,

16 v.

17 MARWAN SHIPPING & TRADING CO.,  
18 FIVE SEAS SHIPPING CO., LLC AND S.J.  
19 GARGRAVE SYNDICATE 2724, IN  
PERSONAM, NAVIGATORS PROTECTION  
& INDEMNITY, AND AL-BUHAIRA  
NATIONAL INSURANCE COMPANY,

20 Defendants

21 AND CROSS-CLAIMS, COUNTERCLAIMS,  
22 THIRD-PARTY COMPLAINT, AND CLAIM  
IN INTERVENTION.

23  
24  
25  
26  
AL BUHAIRA NATIONAL INSURANCE  
COMPANY'S ANSWER TO FIRST  
AMENDED THIRD-PARTY COMPLAINT  
OF S.J. GARGRAVE SYNDICATE 2724

ANSWER

27 Al Buhaira National Insurance Company answers the First Amended Third-Party  
Complaint of S. J. Gargrave Syndicate 2724 as follows:

28 AL BUHAIRA NATIONAL INSURANCE COMPANY'S  
ANSWER TO FIRST AMENDED THIRD-PARTY  
COMPLAINT OF S.J. GARGRAVE SYNDICATE 2724  
CAUSE NO. CIV06-00011 - 1

Case 1:06-cv-00011

Document 57

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29 ORIGINAL

Filed 01/26/2007

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1       1. This answering defendant admits that this is a case of admiralty and maritime  
2 jurisdiction and that this court has jurisdiction. Except as so admitted, the allegations of  
3 paragraph 1 are denied.

4       2. Admitted.

5       3. This answering defendant admits that Gargrave's principal place of business is at  
6 London, England and that Gargrave was, at all relevant times, the OPA insurer of the AJMAN 2  
7 and the issuer and guarantor of the COFR provided to the USCG for the AJMAN 2. Except as so  
8 admitted, this answering defendant is without information sufficient to form a belief as to the  
9 truth of the remaining allegations contained in paragraph 3 and therefore denies same.

10       4. An answer to this paragraph is not required from this answering defendant.

11       5. Al Buhaira National Insurance Company is a corporation duly organized and  
12 existing under the laws of the United Arab Emirates; is an insurer engaged in writing marine  
13 insurance risks; and was the Hull and Machinery insurer of the AJMAN 2. The Hull and  
14 Machinery insurance included limited P&I coverage as well. That policy speaks for itself.  
15 Except as so admitted, the allegations of paragraph 14 are denied.

16       6. Admitted.

17       7. Paragraph 7 does not require an answer.

18       8. Denied.

19       9. Denied.

20       10. Paragraph 10 does not require an answer.

21       11. Denied.

22       12. Denied.

23       13. Paragraph 13 does not require an answer.

24       14. Denied.

25       AL BUHAIRA NATIONAL INSURANCE COMPANY'S  
26 ANSWER TO FIRST AMENDED THIRD-PARTY  
COMPLAINT OF S.J. GARGRAVE SYNDICATE 2724  
CAUSE NO. CIV06-00011 - 2

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1 15. Denied.

2 16-22. The allegations in paragraphs 16 through 22 are not directed at this answering  
3 defendant and no answer is required.

4 23. Denied.

5 **AFFIRMATIVE DEFENSES TO THIRD-PARTY COMPLAINT**

6 1. Failure to state facts sufficient to constitute a cause of action against this answering  
7 defendant.

9 2. This answering defendant is informed and believes that if S.J. Gargrave Syndicate 2724  
10 sustained any injuries and damages, they proximately resulted from the conduct of others  
11 and/or S. J. Gargrave Syndicate 2724.

12 3. The claims set forth in the third-party complaint are time barred.

13 4. S.J. Gargrave Syndicate 2724, by its conduct and/or the conduct of its agents, servants,  
14 representatives, or employees, has waived and/or is estopped and barred from any rights of  
15 recovery against this answering defendant.

17 5. S.J. Gargrave Syndicate 2724 is barred from any relief against this answering defendant  
18 by reason of unclean hands.

19 6. S.J. Gargrave Syndicate 2724 and/or other parties not related to this defendant were  
20 careless and negligent in and about the matters referred to in the third-party complaint, or  
21 were otherwise responsible and legally liable for the allegations contained in said pleading,  
22 which negligence, carelessness, and/or legal liability proximately contributed to and/or were  
23 the sole proximate cause of the damages or injuries complained of, if any there be. Such  
24 negligence, carelessness, and/or liability bar and/or proportionately reduce any recovery  
25 against this answering defendant.

AL BUHAIRAH NATIONAL INSURANCE COMPANY'S  
ANSWER TO FIRST AMENDED THIRD-PARTY  
COMPLAINT OF S.J. GARGRAVE SYNDICATE 2724  
CAUSE NO. CIV06-00011 - 3

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7. S.J. Gargrave Syndicate 2724 has failed to mitigate and minimize its damages, if any there be, and said failure eliminates or reduces any claim for relief by S.J. Gargrave Syndicate 2724 against this answering defendant.

8. S.J. Gargrave Syndicate 2724 is the pollution insurer for the AJMAN 2 as well as the guarantor on the COFR which Gargrave issued. Gargrave has ignored its fiduciary obligations to its insured and has placed its interests above those of its insured. Gargrave has and is acting in bad faith and is in breach of its insurance contract with its insured. It is this bad faith conduct and breach of contract which has led to the instant litigation.

9. In the event it is held liable, this answering defendant alleges that their liability is secondary to other parties in this action and on that basis alleges that any award to which the plaintiff is entitled must first be satisfied by said other parties.

10. This answering defendant hereby incorporates all defenses raised or that could be raised by other parties to this action as if asserted here in full.

11. This answering defendant reserves the right to supplement and add to these affirmative defenses as appropriate.

DATED this 24<sup>th</sup> day of January, 2007.

## CAIRNCROSS & HEMPELMANN, PS

## TEKER TORRES & TEKER, P.C.

By:   
**PHILLIP TORRES, ESQ.**, Attorneys for  
Defendant Marwan Shipping & Trading Co.,  
Sharjah, Five Seas Shipping Co., LLC,  
Sharjah, and Al-Buhaira National Insurance  
Co.

AL BUHAIRA NATIONAL INSURANCE COMPANY'S  
ANSWER TO FIRST AMENDED THIRD-PARTY  
COMPLAINT OF S.J. GARGRAVE SYNDICATE 2724  
CAUSE NO. CIV06-00011 - 4

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**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury according to the laws of the United States that on this date I caused to be served in the manner noted below a copy of this document entitled AL BUHAIRA NATIONAL INSURANCE COMPANY'S ANSWER TO FIRST AMENDED THIRD-PARTY COMPLAINT OF S.J. GARGRAVE SYNDICATE 272 on the following individuals:

Office of the United States Attorney  
108 Hernan Cortez Avenue, Suite 500  
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Bank of Hawaii Building  
134 West Soledad Avenue, Suite 402  
Hagåtña, Guam 96910

DATED this 26<sup>th</sup> day of January, 2007.

*Phillip Torres*  
**PHILLIP TORRES**

AL BUHAIRAH NATIONAL INSURANCE COMPANY'S  
ANSWER TO FIRST AMENDED THIRD-PARTY  
COMPLAINT OF S.J. GARGRAVE SYNDICATE 2724  
CAUSE NO. CIV06-00011 - 5

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